

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERICK THOMPSON,

Defendant-Appellant.

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UNPUBLISHED

December 10, 2002

No. 233317

Wayne Circuit Court

LC No. 99-011055

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of kidnapping, MCL 750.349, carjacking, MCL 750.529a, armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to a term of twenty to forty years' imprisonment as a fourth habitual offender for the kidnapping conviction, twenty to forty years' imprisonment for the carjacking conviction, twenty to forty years' imprisonment for the armed robbery conviction, and two years' imprisonment for the felony-firearm conviction. We reverse and remand for a new trial.

Defendant first claims that the trial court erred in denying his motion for a new trial because he was denied a fair and impartial jury when a juror, for the first time, revealed during deliberations that she had been raped as a teenager. We review the trial court's grant or denial of a motion for a new trial on the basis of juror misconduct for a clear abuse of discretion. *People v Johnson*, 245 Mich App 243, 250; 631 NW2d 1 (2001).

During deliberations, the trial judge received a note from the jury which stated, "We have a juror who admits being raped as a teenager. Does this affect her being a juror?" The juror failed to reveal this fact during voir dire even though the trial judge asked every juror if they had been, or knew anyone who had been, a victim of a violent crime. The trial court did not remove the juror, nor did the trial judge question the juror regarding her possible bias. After, instructing the jury that they committed to be fair and impartial the trial judge ordered them to resume deliberations. After the jury reached guilty verdicts on all counts, defendant moved for a new trial on the basis that he was deprived of his opportunity to dismiss the juror for cause or peremptorily and the juror potentially tainted the other jurors during the deliberations. At the

hearing on the motion for the new trial, defense counsel stated that if he had known about the prior rape, he would not have left the juror on the panel.

The United States and Michigan Constitutions guarantee a criminal defendant a fair trial by an impartial jury. US Const, Am VI; Const 1963, art I, § 20; *Duncan v Louisiana*, 391 US 145, 149; 88 S Ct 1444; 20 L Ed 2d 491 (1968); *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994); *People v Daoust*, 228 Mich App 1, 7; 577 NW2d 179 (1998). The purpose of voir dire is to “elicit enough information for development of a rational basis for excluding those who are not impartial from the jury.” *Tyburski*, *supra* at 618.

“It is important for trial courts to safeguard a defendant’s right to a fair trial before an impartial jury.” *People v Johnson*, 103 Mich App 825, 829; 303 NW2d 908 (1981). As such, “[i]t is imperative, in securing the rights of the parties to an impartial jury, for the court to allow the elicitation of sufficient information so that the court can make an independent determination of the juror’s ability to be impartial.” *Tyburski*, *supra* at 606. A trial court’s failure to adequately question jurors regarding potential bias so that for cause and/or peremptory challenges can be intelligently exercised constitutes an abuse of discretion. *Id.* at 619.<sup>1</sup>

In this case, the possible bias of the juror was apparent by the note provided to the court indicating that she had previously been a victim of a rape. The note gave the court a reason to suspect juror misconduct because the juror failed to disclose this fact even though the trial judge asked every juror if he or she had been a victim of a violent crime. Additionally, defense counsel moved for a mistrial on the basis of the juror’s possible bias. The trial court must safeguard a defendant’s right to an impartial jury by eliciting enough information so that it can independently determine the juror’s ability to be impartial. *Id.* at 606; *Johnson*, *supra* at 829. The trial court, aware of the possible bias of the juror, did not further question the juror to ascertain how and to what extent her prior rape may have affected her ability to act impartially. Therefore, in light of the trial court’s duty to safeguard a defendant’s right to a impartial jury, we find that the trial court, independently, should have questioned the potentially biased juror to ascertain if she could be impartial. Not only did the court fail to inquire into the incident to determine whether the juror could act impartially, the court did not obtain a reassurance from the juror that she could act impartially. Accordingly, we find that the trial court abused its discretion in determining that the juror should not be excused without conducting further examination of the potentially biased juror to determine whether she could deliberate impartially. *Johnson*, *supra* at 256 n 5.

While the people confess error on this issue, they claim that a simple remand to determine the prejudice of such juror, if any, and whether the jury’s verdict was tainted because of such disclosure, could remedy any error below. We disagree and hold that such a remand would be fruitless and an exercise in futility since well over two years has elapsed since the date of defendant’s conviction. Jurors could well be deceased or there whereabouts unknown.

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<sup>1</sup> The same standard is applied to challenges made after the jury is impaneled. *Rice v Winkelman Bros Apparel, Inc*, 13 Mich App 281, 287; 164 NW2d 417 (1968).

Resolution of the foregoing issue being dispositive, discussion of defendant's remaining issues on appeal is rendered unnecessary.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Donald E. Holbrook, Jr.

/s/ Jessica R. Cooper